

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL UNDER SECTION 109 No 19 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
2 to 5 No

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INDICA LABORATORIES P.LTD.

Versus

REGISTRAR OF TRADE MARKS

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Appearance:

MR RR SHAH for Petitioner

MR ND NANAVATI for Respondent No. 1, 2

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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 19/06/98

ORAL JUDGEMENT

1. Heard the learned counsel for the appellant. The appellant has applied for registration of word 'GLORED' per se in respect of pharmaceutical and medicinal preparation in Class-5 of the IVth schedule to the Trade and Merchandise Marks Rules, 1959. The said application was filed on 26.5.87 and officially numbered as 472677 by the Registrar. The mark aforesaid was alleged to be used by the applicant since 25th February, 1985. The Asst.

Registrar of the Trade Mark by communication dated 19.7.1989 objected to the registration of the word 'GLORED' as trade mark on the ground that the mark is descriptive of the character of goods. Ultimately, the application was rejected on the ground being in contravention of provisions under Section 9 of the Act.

2. It was the view of the Registrar that the mark consisted of combination of two descriptive words GLOW and RED. By referring to the dictionary meaning of words Glow and Red, it further came to the conclusion that it has direct reference to the character and quality of the goods. Aggrieved by the aforesaid order, the appellant has preferred this Appeal and has urged that the order is on the face of it erroneous and as the 'word, sought to be registered as trade mark is of no significance and it cannot be dissected in the matter as done by the Assistant Registrar in two separate words and referring to dictionary meaning of two independent words, so as to conclude about the character and quality of the word for which the claim for registration has been made.

3. Having carefully considered the contentions of the learned counsel for the appellant, I am of the opinion that it has merit.

4. The controversy centres round the provision of Section 9(1)(d) of the Trade and Merchandise Marks Act, 1958. In order to consider a trade mark to be registrable which does not fall within the categories of clause (a), (b) and (c) of Sec.9 it must construe one or more words having no direct reference to the character or quality of the goods and not being, according to its ordinary signification, a geographical name or a surname or a personal name or any common abbreviation thereof or the name of a sect, caste or tribe in India. This connotes that in order to be eligible for being registration a word which is not a name of the company firm or individual represented in a special or particular manner or which is not the signature of the applicant for registration or some predecessor in his favour or one or more words, it must be a non-descriptive word having no direct reference to the character or quality of the goods in connection with which the registration of trade mark is sought. The reference to character or quality in order to render the word or words ineligible, language must be direct and plain and not remote and obscure. Likewise the words which is sought to be construed as laudatory, should have obvious signification of praise, and not one out of which an inference of praise has to be spelt out by a laboured process. To illustrate the

point, reference may be made to decision of Delhi High Court in Mohd. Rafiq v. Modi Sugar Mills Ltd., reported in AIR 1972 Delhi 46 where question had arisen about the use of word "SUN" as trade mark in connection with commodities known as lanterns and globes for lamps. Like objection was raised that as rays of sun dispel darkness and lanterns too are used for dispelling darkness, therefore, using of word 'sun' is a descriptive word denoting character of the goods with which the words associated. The Delhi High Court rejected the plea by holding that the word 'sun' is inherently incapable of being distinctive of the lanterns manufactured by the respondent.

5. In the present case, the word which has been sought to be registered as Trade mark is 'Glored' which by itself does not find place in English Dictionary and has no specific meaning. In order to assign it has any meaning to it, one has to dissect and find it the words as 'Glo and Red' and by looking at its dictionary meaning for relating it to the quality and character of the medicine. Firstly, in considering the question of registration of trade mark and its imprint on the mind of people, who are likely to buy the commodity identified with the concerned trade mark, one has to take into consideration the class of people who are likely to use the commodity, the level of their education and understanding. I am afraid that learned Assistant Registrar has totally ignored this vital aspect in considering that the commodity with which the word was associated are medicinal which are used by vast majority of people all around the country which is India where the language of communication, understanding and medium of education for masses is not English. It is not expected of common man in country like India having far flung areas to find out a combination of two words, as suggested by learned Assistant Registrar in his order to dissect the word in two distinct words and by assimilating separate meaning of those words relate the same to the character and quality of the medicine with which it is associated. Perhaps, people who do not know English or even those who know the language merely to read and write their names are not expected to go into the etymology of words like 'Glow and Red' and find out such meaning as found by the learned Assistant Registrar to discern the quality and character of the commodity with which it is associated. That apart it is difficult to understand how the word 'glored' even if it is taken in the manner in which learned Assistant Registrar is read, has direct reference to character or quality of the goods in question. The medicines are for curing the

disease or preventing the disease. How 'Glored' is directly related to the medicinal preparation for assigning with it the character and quality of the word in question by the consumers. The inference drawn by Assistant Registrar appears to be remote and farfetched requires a laborious processes by any person, even well versed in the English Language and its niceties to relate it with the character and quality of the pharmaceutical or medicinal preparation with which it is likely to be associated.

6. I, therefore, find that the Assistant Registrar had erred in holding that the word 'GLORED' sought to be registered as Trade Mark by the Appellant is a descriptive words and it has a definite meaning having direct reference to the quality and character of the goods and the inference drawn by him is not accepted.

7. Accordingly, this Appeal is allowed. The order passed by the learned Assistant Registrar is set aside and he is directed to proceed with the application in accordance with law. There shall be no order as to costs.

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